IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE NO. 170 OF 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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DAHIBA FAMILY TRUST - Applicant(s)
Versus
COMMISSIONER OF INCOME TAX - Opponent(s)

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Appearance :
MR. TUSHAR HEMANI for MR. S.N. SOPARKAR for Applicant(s).
MRS. MONA BHATT for MR. MANISH R. BHATT for Opponent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/07/2006

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

Mr.Tushar Hemani, learned Counsel for the

assessee, and Smt.Mona Bhatt, learned Counsel for the Revenue, are heard.

2. In an identical situation, in the matter of ***Sanjiv Family Trust vs. Commissioner of Income Tax, ITR 149 of 1995*** and other allied matters, decided on 13th July, 2006, we have remitted the matter back to the Tribunal with a direction that the Tribunal is required to reconsider the entire matter especially in light of Section-164, Explanation-1(ii).

3. For the reasons stated in the said order, we set aside the order passed by the Tribunal and remand the matter to the Tribunal with the directions as contained in paragraph-7 of the said order. For ready reference, paragraph-7 of the said order is also quoted down below:

> *"At this stage, Mr.Bhatt, learned counsel for the Revenue submits that the entire order made by the Tribunal, including the benefit in relation to the double taxation be set aside so that proper tax is recovered either from the first level Trust beneficiary or from the second level Trust beneficiary or from the Body of Individuals or from the individuals. Taking into consideration the fact that the order in*

relation to recovery of maximum marginal rate of interest is being set aside on the ground of beneficiary share, we are of the opinion that that part of the order may also be set aside. The Tribunal would be entitled to reconsider the entire matter and redetermine the liability of the assessee, that is, the beneficiary of the first level Trust. It would be open to the Tribunal to reconsider the matter and decide the matter in accordance with law after taking into consideration the judgments above-referred and 209 ITR 101 and 231 ITR 540 on which reliance is being placed by the learned counsel for the Revenue. As we are remanding the matters back to the Tribunal, we refuse to make any observation on the merits of the matters as the same is likely to adversely affect the right of either party.

4. Accordingly, the Reference stands disposed of. No costs.

[***R.S.Garg, J.***]

[***M. R. Shah, J.***]

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